

MONDAY , SEPTEMBER 28, 1998

At 9:30 a.m., the court met in the Library & Courts Building for a continuation of court calendar session.

PRESENT: SIMS, Acting Presiding Justice
 SCOTLAND, Associate Justice
 HULL, Associate Justice

Bailiff: Rios
Calendar Called.

Civil JAMES CLEVELAND ET AL.
No. v.
C025368 SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

James Cleveland argued for Himself in Pro Per as Plaintiff-Appellants. Phillip A. Trujillo, of Girard & Vinson argued for Defendant-Respondent. Cause submitted.

At 9:44 a.m., court recessed. At 9:45 a.m., court reconvened with the same panel except Associate Justice Raye in place of Associate Justice Scotland.

MONDAY, SEPTEMBER 28, 1998 CONTINUED

Civil JOHN ROTH
No. v.
C027262 GEORGE MALSON

Cause called. Daniel Boone, of Wanland & Bernstein argued for Plaintiff-Appellant. Roland K. Iverson, Jr., of Rich, Fuidge, Morris & Iverson argued for Defendant-Respondent. cause submitted.

At 10:14 a.m., court recessed. At 10:19 a.m., court reconvened with the same panel except Associate Justice Callahan in place of Associate Justice Hull.

Civil MARRIAGE OF REUM
No. TERRANCE PATRICK REUM
C027770 v.
JEANNINE M. TOBEY-HENDRICKSON REUM

Cause called. Francine R. A. Tone, of Tone & Tone argued for Appellant. Willard E. Stone argued for Respondent. D. Gene Fink did not appear on behalf of Appellant. Cause submitted.

At 10:30 a.m., court recessed. At 10:35 a.m., court reconvened with the same panel except Acting Presiding Justice Nicholson in place of Acting Presiding Justice Sims.

Civil JASON BEAN
No. v.
C024321 WASTE MANAGEMENT OF SACRAMENTO

Cause called. Richard S. Bruno, of Gordon, DeFraga, Watrous & Pezzaglia argued for Plaintiff-Appellant. Marjorie E. Manning, of Bolling, Walter & Gawthrop argued for Defendant-Respondent. Cause submitted.

At 10:45., court recessed. At 2:02 p.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Nicholson and Associate Justice Morrison.

MONDAY, SEPTEMBER 28, 1998 CONTINUED

Civil SCOTT EDWARD CUMMINGS
No. v.
C026205 TACO BELL #2914 ET AL.

Cause called. Jack Vetter argued for Plaintiff-Appellant. Kenneth A. Nichols, of Scott, Nichols & Matteucci argued for Defendants-Respondents. Daniel S. Glass appear on behalf of Plaintiff-Appellant but did not argue. Cause submitted.

At 2:34 p.m., court recessed. At 2:37 p.m., court reconvened with Acting Presiding Justice Blease, Associate Justice Morrison, and Associate Justice Hull.

Civil LORENA R. DAVIS, A MINOR, ETC.
No. v.
C025766 WOOD-MIZER PRODUCTS, INC.
GLENN H. DAVIS ET AL.

Cause called. Douglas A Sears, of Matheny, Sears, Linkert & Long argued for Defendant-Appellant-X-Respondent. Tony J. Tanke of Tanke & Willemsen, argued for Plaintiff-Respondent-X-Appellant. Eric Wiesel, of Matheny, Sears Linkert & Long appeared on behalf of Defendant-Appellant-X-Respondent but did not argue. Stewart M. Tabak, of Drivon & Tabak appeared on behalf of Plaintiff-Respondent-X-Appellant but did not argue. Cause submitted.

Court adjourned at 3:10 p.m., until 9:30 a.m., Monday, October 19, 1998.

Crim. THE PEOPLE (Not for Publication)
No. v.
C027894 JODI WRIGHT

The judgment is affirmed.

SCOTLAND, J.

We concur: SIMS, Acting P.J.
DAVIS, J

MONDAY, SEPTEMBER 28, 1998 CONTINUED

Civil ROBERT CZOSMYK ET AL.
No. v. (Not for Publication)
C025632 J.C. PENNEY COMPANY, INC. ET AL.

The judgment is affirmed.

SCOTLAND, J.

We concur: PUGLIA, P.J.
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C027613 DANIEL LEE DUNNING

The abstract of judgment with respect to the restitution fine under section 1202.4, subdivision (b) is modified by reducing the fine from \$10,400 to \$10,000. The five-year sentence enhancement for the 1980 robbery conviction is stricken and the judgment is modified by reducing defendant's aggregate prison sentence to 71 years to life. The clerk of the superior court shall transmit a copy of this decision to the Department of Corrections. As modified, the judgment is affirmed.

CALLAHAN, J.

I concur: MORRISON, J.

I concur: in the judgment and opinion except to part II of the discussion as to which I concur in the result.

BLEASE, Acting P.J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C028292 GARY MANDEL KELLY

The judgment is affirmed.

SCOTLAND, Acting P.J.

We concur: NICHOLSON, J.
 HULL, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C028202 RAYMOND MARTIN VANDENBERG ET AL.

The judgment is affirmed.

SCOTLAND, Acting P.J.

We concur: NICHOLSON, J.
 HULL, J.

MONDAY, SEPTEMBER 28, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C028827 BURNELL COMPTON, SR.

The judgment is modified to impose a state prison term of two years on count VII stayed pursuant to section. 654. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy of the abstract to the Department of Corrections.

CALLAHAN, J.

We concur: SIMS, Acting P.J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C028225 KEVIN MICHAEL RUSKAUFF

The judgment is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C028320 TERRY WILLIAMS

The judgment is affirmed.

SCOTLAND, Acting P.J.

We concur: NICHOLSON, J.
 HULL, J.

Civil WYNDE BROWN ET AL.
 No. v.
 C022270 BIEFFE USA, INC., ET AL,

The judgment is affirmed.

SCOTLAND, J.

We concur: BLEASE, Acting P.J.
 NICHOLSON, J.

MONDAY, SEPTEMBER 28, 1998 CONTINUED

Civil ELIJAH DAVIS (Not for Publication)
No. v.
C026580 SAFEWAY, INC.

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: MORRISON, J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C026823 ANTHONY RICHARD ROSSI

The judgment is modified to reflect the conviction for possession of methamphetamine is a misdemeanor. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the department of Corrections. As modified, the judgment is affirmed.

CALLAHAN, J.

I concur: RAYE, J.

I dissent:

Officer Halitzel exceeded the scope of consent when he opened the ashtray. No reasonable person could expect to find identification in an ashtray.

BLEASE, Acting P.J.

TUESDAY, SEPTEMBER 29, 1998

Civil RAY FLADEBOE LINCOLN-MERCURY INC.
No. v.
C028067 NEW MOTOR VEHICLE BOARD
 FORD MOTOR COMPANY ETC.

Civil FORD MOTOR COMPANY ETC.
No. v.
C028849 NEW MOTOR VEHICLE BOARD ETC.
 RAY FLADEBOE LINCOLN-MERCURY INC.
BY THE COURT:

On the court's own motion, the above cases are consolidated. The cases are ordered consolidated for all further appellate procedures except that they will retain their respective case numbers. Whenever documents are submitted for filing by the parties, an original must be presented for each case number; however, if copies of documents are required pursuant to the California Rules of Court, the parties need only submit a maximum of four. The cases will be considered for decision together.

Dated: September 29, 1998

BLEASE, Acting P.J.

Crim. THE PEOPLE (Certified for Publication)
No. v.
C026099 JUAN JOSUEL CORIA

The judgment is reversed.

SCOTLAND, J.

We concur: PUGLIA, P.J.
 BLEASE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C026157 JUAN MADRIGAL

The judgment is affirmed.

DAVIS, Acting P.J.

We concur: NICHOLSON, J.
 HULL, J.

TUESDAY, SEPTEMBER 29, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)
No. v.
C023103 MICHAEL G. EVANS

The judgment is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.
SCOTLAND, J.

Civil MICHAEL STEVENS ET AL. (Not for Publication)
No. v.
C025854 SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY ET
AL.

The judgment is affirmed.

DAVIS, J.

I concur: RAYE, J.
I concur in the result:
BLEASE, Acting P.J.

civil COUNTY OF PLACER (Not for Publication)
No. v.
C026816 DALE LAW

The order is modified to specify as AFDC reimbursement of \$3,942 (instead of \$7,245) in case no. As modified, the order is affirmed. Each party will pay its own costs on appeal.

DAVIS, J.

We concur: BLEASE, Acting P.J.
SCOTLAND, J.

WEDNESDAY, SEPTEMBER 30, 1998

Juvenile In re ERIC W., a Person Coming Under the Juvenile Court Law.
No. THE PEOPLE
C025849 v.

ERIC W.

BY THE COURT:

Respondent's request to publish the opinion filed on September 9, 1998, is denied.

Dated: September 30, 1998

NICHOLSON, Acting P.J.

WEDNESDAY, SEPTEMBER 30, 1998

Civil AAA AUDIOCOMMUNICATION ASSOCIATES INC.
No. v. (Not for Publication)
C025255 PACIFIC BELL DIRECTORY

The judgment is affirmed.

SCOTLAND, J.

We concur: BLEASE, Acting P.J.
 NICHOLSON, J.

Civil JASON BEAN (Not for Publication)
No. v.
C024321 WASTE MANAGEMENT OF SACRAMENTO

The judgment is affirmed. Waste Management shall recover costs on appeal.

RAYE, J.

We concur: NICHOLSON, Acting P.J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C027485 KEITH WLLACE HOLLOWAY

The judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect the imposition of consecutive one-year terms for the section 667.5, subdivision (b) enhancements, and to forward a copy of the amended abstract to the Department of Corrections. (See fn. 1, ante.)

SCOTLAND, Acting P.J.

We concur: NICHOLSON, J.
 MORRISON, J.

WEDNESDAY, SEPTEMBER 30, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)

No. v.

C024338 KENNETH RANDALL GRAHAM, SR. ET AL.

The judgments as to Graham, Wright and Ephrain are affirmed. The one-year prison term enhancement arising from defendant Parker's conviction on February 16, 1988, for violation of Health and Safety Code section 11351.5 is stricken. As modified, the judgment as to Parker is affirmed. The trial is directed to amend Parker's abstract of judgment in accordance with this opinion and to send a copy of thereof to the Department of Corrections.

RAYE, J.

We concur: PUGLIA, P.J.
CALLAHAN, J.

Civil TERRANCE PATRICK REUM (Not for Publication)

No. v.

C027770 JEANNINE M. TOBEY-HENDRICKSON-REUM

The judgment is affirmed. Husband shall recover costs on appeal.

RAYE, J.

We concur: SIMS, Acting PJ.
CALLAHAN, J.

Civil SCOTT EDWARD CUMMINGS

No. v. (Not for Publication)

C026205 TACO BELL #2914 ET AL.

The judgment is affirmed.

MORRISON, J.

We concur: SIMS, Acting P.J.
NICHOLSON, J.

THURSDAY, OCTOBER 1, 1998

Civil	COUNTY OF BUTTE
No.	v.
C028527	CLIFTON DOUGLAS MURPHY
Civil	MARRIAGE F CLIFTON AND BONNIE MURPHY
No.	CLIFTON MURPHY
C030258	v.
	BONNIE MURPHY
	BY THE COURT:

The motion of appellant for consolidation of the above cases is granted. The cases are ordered consolidated for all further appellate procedures except that they will retain their respective case numbers. Whenever documents are submitted for filing by the parties, an original must be presented for each case number; however, if copies of documents are required pursuant to the California Rules of Court, the parties need only submit a maximum of four. The cases will be considered for decision together.

Appellant's combined opening brief is due on or before 30 days from the filing of the record on appeal in C030258.

Dated: October 1, 1998

BLEASE, Acting P.J.

Civil	LARRY NEAL SHERMAN ET AL.
No.	v.
C026288	JOHN R. SNIDER ET AL.
C027053	

As to the Bank, the trial court properly adjudicated all causes of action except the tenth in favor of the Bank. Because summary adjudication in favor of the Bank on the tenth cause of action was erroneous, the judgment in favor of the Bank is reversed. The attorney's fee award in favor of the Bank is reversed. The judgment in favor of Snider and Wentland is affirmed. As between plaintiffs and the bank, the parties shall bear their costs on appeal. As between plaintiffs and Snider and Wentland, Snider and Wentland recover their costs on appeal.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
HULL, J.

THURSDAY, OCTOBER 1, 1998

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C026558 SHANE CHRISTOPHER PHENIX

The judgment is affirmed.

RAYE, J.

We concur: SCOTLAND, Acting P.J.
 HULL, J.

Civil ELISA LOZANO, A MINOR, ETC. ET AL.
 No. v. (Not for Publication)
 C025273 TOYOTA MOTOR CORPORATION ET AL.

The judgment is affirmed. Respondent shall recover their costs on appeal.

NICHOLSON, J.

We concur: SIMS, Acting P.J.
 HULL, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C028290 TIMOTHY HOWARD HARRIS

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: DAVIS, J.
 CALLAHAN, J.

FRIDAY, OCTOBER 2, 1998

Civil JAMES CLEVELAND ET AL.
 No. v.
 C025368 SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

The judgment is affirmed.

HULL, J,

We concur: SIMS, Acting P.J.
 SCOTLAND, J.

FRIDAY, OCTOBER 2, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)
No. v.
C023350 TIMOTHY RAY JONES

The judgment is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.
RAYE, J.